

Ex. II A

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Attorney at Law
75-1000 Henry Street, Suite 201
Kailua-Kona, HI 96740

Attorney for Defendant
ALBERT IAN SCHWEITZER

1999 SEP 30 PM 4:00

PROSECUTOR'S ATTORNEY
COUNTY OF HAWAII

CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,

Vs.

ALBERT IAN SCHWEITZER and SHAWN
SCHWEITZER,

Defendants

) Case No.: CR- No. 99-147
)
) DEFENDANT ALBERT IAN
) SCHWEITZER'S MOTION TO CHANGE
) VENUE; DECLARATION OF JAMES
) BIVEN; MEMORANDUM IN SUPPORT OF
) MOTION; NOTICE OF HEARING; AND
) CERTIFICATE OF SERVICE
)
) HEARING: October 15, 1999
) TIME: 10:00 a.m.
) JUDGE: Riki May Amano
)

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DEFENDANT ALBERT IAN SCHWEITZER'S MOTION TO CHANGE VENUE

Defendant ALBERT IAN SCHWEITZER, by and through his court-appointed attorney, JAMES BIVEN, ESQ., hereby moves this Court for an order granting a change of venue for the trial in this matter.

This motion is made pursuant to Rules 47 of the Hawaii Rules of Penal Procedure, the 5th, 6th, and 14th Amendments of the United States Constitution, and Article I, Sections 4, 5, 10, and 14 of the Hawaii State Constitution, and is based upon the declaration of counsel, the memorandum of law attached hereto and made a part hereof, and the evidence and argument to be presented at the hearing on this motion, the pleadings, records and other materials on file with the Court in this matter.

DATED: Kailua-Kona, Hawaii, September 28, 1999.



JAMES BIVEN
Attorney for Defendant
ALBERT IAN SCHWEITZER

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

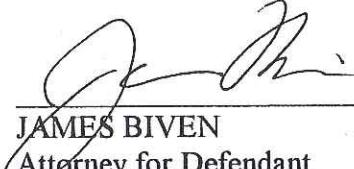
STATE OF HAWAII) CR NO. 99-147
)
 vs.) DECLARATION OF COUNSEL
)
 ALBERT IAN SCHWEITZER and)
 SHAWN SCHWEITZER)
)
 Defendants.)
 _____)

DECLARATION OF COUNSEL

1. That Declarant is the court-appointed counsel for Defendant ALBERT IAN SCHWEITZER (hereinafter "Defendant"), in the above-entitled case;
2. Declarant has been involved with this case for almost two years and states that he is aware of the extensive news coverage the case has generated since Defendant has been a target by the police for the offenses charged in this case.
3. A co-defendant Frank Pauline was recently convicted after a 6 week trial commencing July 19, 1999.
4. That the news coverage was intensified even more during and after the trial of Frank Pauline.
5. That due to the extensive news coverage, there is so great a prejudice against Defendant that he cannot obtain a fair and impartial trial in this Circuit.
6. That Declarant has numerous newspaper articles that are presently being duplicated and that he will supplement the record with those articles as exhibits for this motion as soon as the duplication is completed.

I, JAMES BIVEN, do declare under penalty of law that the foregoing is true and correct.

DATED: Kailua-Kona, Hawaii, September 28, 1999.


JAMES BIVEN
Attorney for Defendant
ALBERT IAN SCHWEITZER

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII)	CR NO. 99-147
)	
vs.)	MEMORANDUM IN SUPPORT OF
)	MOTION
)	
ALBERT IAN SCHWEITZER and)	
SHAWN SCHWEITZER)	
)	
Defendants.)	
)	

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

Defendant Albert Ian Schweitzer (hereinafter "Defendant") and his brother Shawn Schweitzer (hereinafter "Shawn") were charged with three counts related to the Dana Ireland murder. The news coverage has been quite extensive in the print, radio and television media.

II. ARGUMENT

It is a fundamental protection under the Hawaii State Constitution and the United States Constitution that a Defendant be tried by a fair and impartial jury.

The Hawaii Rules of Penal Procedure provide that venue for a circuit court trial may be changed to another circuit where there is great prejudice to the Defendant. The Rule states in relevant part as follows:

Rule 21. Transfer from district or circuit for trial.

(a) For prejudice in the circuit. The court upon motion of the defendant shall transfer the proceeding as to him to another circuit whether or not such circuit is specified in the defendant's motion if the court is satisfied that there exists in the circuit where the prosecution is pending so great a prejudice against the defendant that he cannot obtain a fair and impartial trial in the circuit.

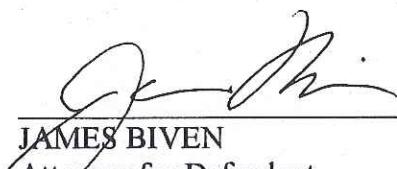
It is the burden of the Defendant to satisfy the court that "so great a prejudice" against the Defendant exists in the circuit where the prosecution is pending that the Defendant cannot obtain a fair and impartial trial in the circuit. State v. Moyd, 1 Haw. App. 439, 619 P.2d 1107 (1980).

In the instant case, the news media's extensive coverage of the before, during and after the guilty verdict of the Frank Pauline trial, that it is probable that most of the jury pool already know of the story told by Frank Pauline which resulted in his conviction. All of the stories, except Frank Pauline's testimony at trial point towards the Schweitzer brothers. The fact that there was a conviction in Frank Pauline's case is surely to influence the jury pool in this community. In this regard, Defendant submits that the venue should be changed to another circuit on grounds that the prejudice is so great

III. CONCLUSION

Based on the foregoing discussion, it is respectfully requested that the court grant Defendant's motion to change venue.

DATED: Kailua-Kona, Hawaii, September 28, 1999.



JAMES BIVEN
Attorney for Defendant
ALBERT IAN SCHWEITZER

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT
STATE OF HAWAII

STATE OF HAWAII)	CR NO. 99-147
vs.)	NOTICE OF MOTION
ALBERT IAN SCHWEITZER and)	
SHAWN SCHWEITZER,)	DATE: October 15, 1999
Defendant.)	TIME: 10:00 a.m.
)	JUDGE: Riki May Amano

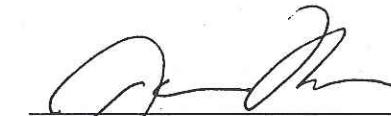
NOTICE OF MOTION

TO: Charlene Y. Iboshi
First Deputy Prosecuting Attorney
County of Hawaii
34 Rainbow Drive
Hilo, Hawaii 96720
Attornry for the State of Hawaii

Keith Shigetomi, Esq.
Pacific Park Plaza, Suite 1440
711 Kapiolani Boulevard
Honolulu, HI 96813
Attorney for SHAWN SCHWEITZER

PLEASE TAKE NOTICE that the undersigned has filed and asked the court to rule on
DEFENDANT ALBERT IAN SCHWEITZER'S MOTION TO CHANGE VENUE before the
Honorable Presiding Judge of the above-entitled Court at the Third Circuit Court, Hilo, Hawaii.

DATED: Kailua-Kona, Hawaii, September 28, 1999.



JAMES BIVEN
Attorney for Defendant
ALBERT IAN SCHWEITZER

CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

STATE OF HAWAII,) Case No.: CR- No. 99-147
Vs.)
ALBERT IAN SCHWEITZER and, SHAWN) CERTIFICATE OF SERVICE
SCHWEITZER)
Defendant)

CERTIFICATE OF SERVICE

I hereby certify that on this date a filed copy of the DEFENDANT ALBERT IAN SCHWEITZER'S MOTION TO CHANGE VENUE was served upon the following person(s) at their last known address(es) by facsimile and by mailing a copy of the same at the United States Post Office in Kailua-Kona, Hawaii, first class postage prepaid to:

Charlene Y. Iboshi
First Deputy Prosecuting Attorney
County of Hawaii
34 Rainbow Drive
Hilo, Hawaii 96720
Attorney for STATE OF HAWAII

Keith Shigetomi, Esq.
Pacific Park Plaza, Suite 1440
711 Kapiolani Boulevard
Honolulu, HI 96813
Attorney for SHAWN SCHWEITZER

DATED: Kailua-Kona, Hawaii, September 28, 1999.


JAMES BIVEN
Attorney for Defendant
ALBERT IAN SCHWEITZER